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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/346,436	07/01/1999	THEODORE W. HOUSTON	TI-21004	2434

23494 7590 01/29/2003

TEXAS INSTRUMENTS INCORPORATED
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EXAMINER

KIELIN, ERIK J

ART UNIT	PAPER NUMBER
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2813

DATE MAILED: 01/29/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/346,436

Examiner

Erik Kielin

Applicant(s)

HOUSTON, THEODORE W.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See attachment

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Communication Re: Appeal

Application No.

09/346,436

Applicant(s)

HOUSTON, THEODORE W.

Examiner

Erik Kielin

Art Unit

2813

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☒ other: See Continuation Sheet

4. ☒ Because of the dismissal of the appeal, this application:

- (a) ☒ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

NOTICE OF DEFECTIVE APPEAL BRIEF

This action responds to Applicant's Response (filed 7 October 2002, Paper No. 22) to the Notice of Non-Compliance (filed 20 May 2002, Paper No.20), and Substitute Supplemental Appeal Brief (filed 23 October 2002, Paper No. 23).

First, in Paper No. 22, Applicant states, "Out of an abundance of caution, this paper should be treated as requesting cancellation of claims 2 and 4 and any other claims pending or alleged to be pending in this application with the exception of claims 9, 22, 25, and 26." (See p. 2, penultimate paragraph.) Applicant does not have the right to amend the claims after prosecution is closed. Prosecution was closed by the action made final (filed 7 January 2002, Paper No. 18). Moreover, this Response was not indicated to be an amendment. Such amendment canceling the indicated claims would be denied entry because, it would complicate the issues on appeal, rather than simplifying the issues on appeal. If cancellation of the claims requested by Applicant to be canceled were, indeed cancelled, it would leave only **dependent** claims 9 and 22 remaining. This would introduce numerous rejections under 35 USC 112(2) for at least for limitations lacking antecedent basis, not to mention numerous rejections under 35 USC 112(1) as lacking enablement for, at least, failure to claim the invention and omitting critical steps in a process. Accordingly, such an amendment would not simplify the issues on appeal and would be denied entry --if such amendment had been made.

Second, in Paper No. 23, Applicant again states, "With reference to the rejection of claims 1, 3, 7 to 9, 18 to 21, 23 and 24, this rejection cannot be understood since all of these claims with the exception of claims 9 and 22 have been canceled." Again, the claims have **not**

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been canceled because (1) no amendment canceling the claims has been provided, and (2) prosecution has been closed by the action made final (Paper No 18).

Accordingly, the indication of claims pending in the application remains uncertain because it is unclear if, in fact, claims 1-4, 7, 8, 18-21, 23, and 24 were canceled, since no proper amendment canceling the claims was made.

Third, this is the second Notice to Applicant that the claims have not been canceled. (See the Notice of Defective Appeal Brief, Paper No. 20, filed 20 May 2002). And to repeat from said Notice,

MPEP 1206 states,

“The question of whether a brief complies with the rule is a matter **within the jurisdiction of the examiner**. 37 CFR 1.192(d) provides that if a brief is filed which does not comply with all the requirements of paragraph (c), the appellant will be notified of the reasons for noncompliance. Appellant will be given the longest of any of the following time periods to correct the defect(s):
(A) 1 month or 30 days from the mailing of the notification of non-compliance, whichever is longer;
(B) within the time period for reply to the action from which appeal has been taken; or
(C) within 2 months from the date of the notice of appeal under 37 CFR 1.191.

Extensions of time may be granted under 37 CFR 1.136(a) or 1.136(b). The examiner may use the form paragraphs set forth below or form PTOL-462, “Notification of Non-Compliance with 37 CFR 1.192(c),” to notify appellant that the appeal brief is defective. **The appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance** of which the appellant was notified.” (Emphasis added.)

Additionally the MPEP states,

“Under 37 CFR 1.192(d), the appellant may file an amended brief to correct any deficiencies in the original brief. Moreover, if appellant disagrees with the examiner's holding of noncompliance, a petition under 37 CFR 1.181 may be filed.”

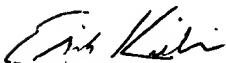
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In the instant case, Appellant was notified of the reasons for non-compliance and has not filed an amended brief overcoming the reasons for non-compliance or filed a petition under 37 CFR 1.181. For the reasons already indicated, the claims remain not cancelled, and it remains unclear the issues on appeal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erik Kielin whose telephone number is 703-306-5980. The examiner can normally be reached on 9:00 - 19:30 on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead, Jr., can be reached at 703-308-4940. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



Erik Kielin
January 28, 2003